

DATA PROTECTION ACT 1998

SUPERVISORY POWERS OF THE INFORMATION COMMISSIONER

ENFORCEMENT NOTICE

To: ColourCoat Ltd

Of: 77 Bohemia Road, St. Leonards-On-Sea, TN37 6RJ

1. The Information Commissioner ("Commissioner" or "ICO") has decided to issue ColourCoat Ltd ("ColourCoat") with an enforcement notice under section 40 of the Data Protection Act 1998 ("DPA").¹ The Notice is in relation to a contravention of Regulations 21 and 24 of the Privacy and Electronic Communications (EC Directive) Regulations 2003 ("PECR").
2. This notice explains the Commissioner's decision.

Legal framework

3. ColourCoat, whose registered office is given above (Companies House Registration Number: 10405998), is the organisation stated in this notice to have used a public electronic communications service for the purpose of making unsolicited calls for the purposes of direct marketing contrary to Regulations 21 and 24 of PECR.

¹ The provisions of the Data Protection Act 1998 remain in force for the purposes of PECR notwithstanding the introduction of the Data Protection Act 2018 (see paragraph 58(1) of Part 9, Schedule 20 of the 2018 Act).

4. Regulation 21 applies to the making of unsolicited calls for direct marketing purposes. Regulation 21 paragraph (1) of PECR provides that:

“(1) A person shall neither use, nor instigate the use of, a public electronic communications service for the purposes of making unsolicited calls for direct marketing purposes where-

- (a) the called line is that of a subscriber who has previously notified the caller that such calls should not for the time being be made on that line; or
- (b) the number allocated to a subscriber in respect of the called line is one listed in the register kept under regulation 26.”

5. Under Regulation 26 of PECR, the Commissioner is required to maintain a register of numbers allocated to subscribers who have notified the ICO that they do not wish, for the time being, to receive unsolicited calls for direct marketing purposes on those lines. The Telephone Preference Service Ltd (“**TPS**”) is a limited company set up to carry out this role. For a fee, it provides businesses who wish to carry out direct marketing by telephone a monthly list of numbers on two registers: the Telephone Preference Service register (“**TPS Register**”) for individuals’ numbers and the Corporate Telephone Preference Service register (“**CTPS Register**”) for businesses’ numbers.
6. In general terms, Regulation 21 paragraph (1)(b) provides that companies cannot make unsolicited calls for direct marketing purposes to telephone numbers on the TPS Register or CTPS Register, unless the

individual or business associated with the number has given their consent to receive such calls.

7. Regulation 21 paragraphs (2)-(5) provide:

- "(2) A subscriber shall not permit his line to be used in contravention of paragraph (1).
- (3) A person shall not be held to have contravened paragraph (1)(b) where the number allocated to the called line has been listed on the register for less than 28 days preceding that on which the call is made.
- (4) Where a subscriber who has caused a number allocated to a line of his to be listed in the register kept under Regulation 26 has notified a caller that he does not, for the time being, object to such calls being made on that line by that caller, such calls may be made by that caller on that line, notwithstanding that the number allocated to that line is listed in the said register.
- (5) Where a subscriber has given a caller notification pursuant to paragraph (4) in relation to a line of his—
 - (a) the subscriber shall be free to withdraw that notification at any time, and
 - (b) where such notification is withdrawn, the caller shall not make such calls on that line."

8. Regulation 21 paragraph (A1) provides that companies making calls for direct marketing purposes must not disguise their identity. Paragraph (A1) states:

“A person shall neither use, nor instigate the use of, a public electronic communications service for the purposes of making calls (whether solicited or unsolicited) for direct marketing purposes except where that person—

(a) does not prevent presentation of the identity of the calling line on the called line; or

(b) presents the identity of a line on which he can be contacted.”

9. Regulation 24 of PECR concerns the information which must be provided when, *inter alia*, a business makes marketing calls which Regulation 21 applies to. Regulation 24 provides, insofar as relevant:

“(1) Where a public electronic communications service is used for the transmission of a communication for direct marketing purposes the person using, or instigating the use of, the service shall ensure that the following information is provided with that communication –

...

(b) in relation to a communication to which regulation 21 or 21A (telephone calls) applies, the particulars mentioned in paragraph (2)(a) and, if the recipient of the call so requests, those mentioned in paragraph (2)(b).

(2) The particulars referred to in paragraph (1) are –

- (a) the name of the person;
- (b) either the address of the person or a telephone number on which he can be reached free of charge."

10. Section 122(5) of the Data Protection Act 2018 ("**DPA 2018**") defines direct marketing as "the communication (by whatever means) of advertising or marketing material which is directed to particular individuals". This definition also applies for the purposes of PECR (see DPA 2018 Schedule 19, paragraphs 430 and 432(6)).

11. Consent is defined in Article 4(11) of the General Data Protection Regulation 2016/679 as "any freely given, specific, informed and unambiguous indication of the data subject's wishes by which he or she, by a statement or by a clear affirmative action, signifies agreement to the processing of personal data relating to him or her".

12. "Individual" is defined in Regulation 2(1) of PECR as "a living individual and includes an unincorporated body of such individuals".

13. A "subscriber" is defined in Regulation 2(1) of PECR as "a person who is a party to a contract with a provider of public electronic communications services for the supply of such services".

14. The DPA contains, at Part V, enforcement powers which are exercisable by the Commissioner. Those provisions are modified and extended for the purposes of PECR by Schedule 1 PECR.

15. Section 40(1)(a) of the DPA (as extended and modified by PECR) provides that, if the Commissioner is satisfied that a person has contravened or is contravening any of the requirements of the

Regulations, she may serve him with an Enforcement Notice requiring him to take within such time as may be specified in the Notice, or to refrain from taking after such time as may be so specified, such steps as are so specified.

The contravention

16. The Commissioner finds that ColourCoat contravened Regulations 21 and 24 of PECR.
17. The Commissioner finds that the contraventions were as follows:
18. Between 1 August 2019 to 31 March 2020, ColourCoat used public telecommunications services for the purposes of making total of 969,273 connected unsolicited calls for direct marketing purposes. These calls resulted in 24 complaints being made to the TPS and 10 complaints to the Commissioner.
19. ColourCoat made repeat calls to subscribers who had informed ColourCoat that they did not wish to receive such calls, in breach of Regulation 21(1)(a) of PECR.
20. In breach of Regulation 21(1)(b) of PECR, 452,811 of the calls in question were to subscribers where the number allocated to the subscriber of the called line was a number listed on the TPS or CTPS Registers maintained in accordance with Regulation 26 of PECR. The Commissioner is satisfied for the purposes of Regulation 21 that these 452,811 unsolicited direct marketing calls were made to subscribers who had registered with the TPS or CTPS at least 28 days prior to receiving the calls, and they had not given their prior consent to ColourCoat to receive calls.

21. In relation to the 969,273 total connected calls, ColourCoat used numbers on which the recipients of the calls could not contact ColourCoat. This was done using various presentation Caller Line Identities ("CLIs"). ColourCoat also used various false company names (including "Homes Advice Bureau", "EcoSolve UK" and "Citizens Advice") and/or did not identify itself. ColourCoat was therefore in breach of:
 - a. Regulation 21(A1) of PECR, not to prevent presentation of the identity of the calling line on the called line, and to present the identity of a line on which it could be contacted; and
 - b. Regulation 24(1)(b) of PECR, to provide the recipient of the calls with its name and either its address or a telephone number on which it could be reached free of charge.
22. The Commissioner has considered, as she is required to do under section 40 (2) of the DPA (as extended and modified by PECR) when deciding whether to serve an Enforcement Notice, whether any contravention has caused or is likely to cause any person damage. The Commissioner has decided that it is unlikely that damage has been caused in this instance.
23. **In view of the matters referred to above, the Commissioner hereby gives notice that, in exercise of her powers under section 40 of the DPA, she requires ColourCoat to take the steps specified in Annex 1 of this Notice.**

Right of Appeal

24. There is a right of appeal against this Notice to the First-tier Tribunal (Information Rights), part of the General Regulatory Chamber. Information about appeals is set out in the attached Annex 2.

Dated the **16th** day of **June** 2021

Andy Curry
Head of Investigations
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

ANNEX 1**TERMS OF THE ENFORCEMENT NOTICE**

ColourCoat shall, no later than 30 days after the date of this notice:

- (1) Neither use, nor instigate the use of, a public electronic communications service for the purposes of making unsolicited calls for direct marketing purposes where the called line is that of:
 - (a) a subscriber who has previously notified ColourCoat that such calls should not be made on that line; and / or
 - (b) a subscriber who has registered their number with either the Telephone Preference Service or the Corporate Telephone Preference Service at least 28 days previously, and who has not notified ColourCoat that they do not object to such calls being made.
- (2) Neither use, nor instigate the use of, a public electronic communications service for the purposes of making calls (whether solicited or unsolicited) for direct marketing purposes except where ColourCoat —
 - (a) does not prevent presentation of the identity of the calling line on the called line; or
 - (b) presents the identity of a line on which it can be contacted.

(3) where a public electronic communications service is used for the transmission of a communication for direct marketing purposes, ensure that the recipient of the communication is provided with:

- (a) the name of the person; and if the recipient so requests,
- (b) either the address of the person or a telephone number on which he can be reached free of charge.

ANNEX 2**RIGHTS OF APPEAL AGAINST DECISIONS OF THE COMMISSIONER**

1. Section 48 of the Data Protection Act 1998 gives any person upon whom an enforcement notice has been served a right of appeal to the First-tier Tribunal (Information Rights) (the "Tribunal") against the notice.
2. If you decide to appeal and if the Tribunal considers:-
 - a) that the notice against which the appeal is brought is not in accordance with the law; or
 - b) to the extent that the notice involved an exercise of discretion by the Commissioner, that she ought to have exercised her discretion differently,the Tribunal will allow the appeal or substitute such other decision as could have been made by the Commissioner. In any other case the Tribunal will dismiss the appeal.
3. You may bring an appeal by serving a notice of appeal on the Tribunal at the following address:

General Regulatory Chamber
HM Courts & Tribunals Service
PO Box 9300

Leicester

LE1 8DJ

Telephone: **0203 936 8963**

Email: grc@justice.gov.uk

- The notice of appeal should be served on the Tribunal within 28 days of the date on which the enforcement notice was sent

4. The statutory provisions concerning appeals to the First-tier Tribunal (General Regulatory Chamber) are contained in sections 48 and 49 of, and Schedule 6 to, the Data Protection Act 1998, and Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 (Statutory Instrument 2009 No. 1976 (L.20)).